United Nations **AT**

Administrative Tribunal

Distr.
LIMITED

AT/DEC/950
28 July 2000

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 950

Case No. 975: ABBAS

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Julio Barboza, Vice-President, presiding; Mr. Victor Yenyi Olungu; Ms. Marsha A. Echols;

Whereas, on 7 April 1999, Yaser Abbas, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application in which he requested, in accordance with article 11 of the Statute of the Tribunal, revision of Judgement No. 874, rendered by the Tribunal on 31 July 1998;

Whereas the application contained pleas which read, in part, as follows:

> "9. Whereas [the letter dated 21 June 1977 from the Director of UNRWA Operations, West Bank, to the Chairman of the Executive Council of the Staff Union, West Bank, containing a legal opinion from the Agency's General Counsel, which the Applicant was able to obtain recently], and [the application] ... provide conclusive evidence that [the] Respondent had violated [the Staff Regulations and Rules with regard to the Applicant's] resignation [in] that [the] letter of acceptance of resignation [was backdated deliberately] to indicate it was [written] prior to the withdrawal of [the] resignation ... [the] Tribunal is

prayed please, to order revision of judgement, and hold according to [the] pleas as submitted in the [original] application.

..."

Whereas the Respondent filed his answer on 15 June 1999;

Whereas the Applicant submitted an additional document on 1 July 1999;

Whereas the Applicant filed written observations on 11 September 1999;

Whereas the Respondent submitted comments on the Applicant's written observations on 4 January 2000;

Whereas the facts of the case were set out in Judgement No. 874.

Whereas the Applicant's principal contentions are:

1. The Respondent, determined not to allow the Applicant to withdraw his resignation, manipulated the date of the letter of acceptance of the resignation.

2. The Respondent concealed the letter dated 21 June 1977 written by the Director of UNRWA Operations, West Bank, although its contents were relevant in the case.

3. The Respondent attempted to mislead the Tribunal by not providing it with UNRWA's standing policy as documented in Personnel Directive A/9, paragraph 3 of Part V, as set out in the letter of 21 June 1977.

Whereas the Respondent's principal contentions are:

1. The Applicant has given no details about when he discovered the letter dated 21 June 1977, save that he said that he was able to obtain it "a few days [before 7 April 1999]". Consequently there is insufficient evidence that the application was made within thirty days of the discovery of the fact, as required by article 11.

2. The letter of 21 June 1977 was not concealed. The opinion expressed in the letter was based on an examination of the 1977 language of Area staff rule 109.6 and Personnel Directive

A/9, which was redrafted in 1989 to remove the phrase "all resignations will be acknowledged by official letter which will confirm the date of separation". Accordingly, the opinion in the letter was not correct at the time of the Applicant's resignation.

3. The production of the letter of 21 June 1977 is not a "decisive factor" which would have caused the Tribunal to conclude otherwise than it did in paragraph VI of Judgement No. 874.

The Tribunal, having deliberated from 14 to 28 July 2000, now pronounces the following judgement:

I. The Applicant has submitted an application, requesting revision of Judgement No. 874.

II. Paragraph I of the Tribunal's judgement, which is the subject of this request for revision, reads as follows:

> "The principal issue raised by the Applicant is whether, under the applicable rules, a resignation becomes effective only after it has been accepted by the Respondent. ... the Tribunal finds that a resignation becomes effective when submitted and does not require the Respondent's approval to become effective. Any other finding would make a staff member's desire to discontinue his or her service subject to the Respondent's control - a result clearly not contemplated by the Staff rules related to resignation. Because the Tribunal finds that the resignation was effective upon submission, the arguments by the Applicant regarding the timing of the Respondent's 'acceptance' and of the Applicant's 'withdrawal' are irrelevant."

III. The new fact invoked by the Applicant is the discovery of a letter by the Director of UNRWA Operations, West Bank, to the Chairman of the Executive Council of the Staff Union, West Bank. The Tribunal takes note of the date of that letter: 21 June 1977.

IV. It appears from the letter that the Chairman of the Executive Council of the Staff Union had asked the Director of UNRWA Operations a question regarding the legal aspects of the Agency's refusal to accept the withdrawal of a resignation. It also appears that the Director of UNRWA Operations had "Inasmuch as this was a legal question" referred it to Headquarters and that "it was taken to the Agency's General Counsel for advice".

V. The first sentence of the operative part of the General Counsel's reply, quoted in the letter, reads as follows:

> "It appears from the general tenor of staff rule 109.6 that a resignation is not a unilateral act and needs therefore to be accepted".

The Tribunal notes that the version of staff rule 109.6 referred to in the General Counsel's reply was the one applicable in 1977.

This interpretation - the letter goes on to say - is supported by paragraph 3 of Part V of Personnel Directive A/9 (also the version applicable in 1977), which states that "all resignations will be acknowledged by official letter which will confirm the date of separation."

VI. As the Applicant contends, staff rule 109.6 must be interpreted in conjunction with Personnel Directive A/9. In fact, staff regulation 9.2 is also pertinent. It reads as follows: "Staff members may resign from the Agency upon giving the Commissioner-General the notice required under the terms of their appointment."

VII. Article 11 of the Statute of the Tribunal authorizes the revision of a judgement "on the basis of the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Tribunal and also to the party claiming revision, always provided that such ignorance was not due to negligence."

VIII. Should the Tribunal find that the discovery of the letter containing the General Counsel's opinion is a new fact within the meaning of article 11, it would then have to determine what influence, if any, the interpretation of the General Counsel might have had on the Tribunal's own interpretation of the legal effect of tendering a resignation as expressed in its Judgement No. 874.

IX. A first consideration is that the Tribunal is not bound by the legal opinion of the General Counsel. On the contrary, where there is a conflict between the General Counsel's opinion and that of the Tribunal, it would be the Tribunal's opinion that would prevail.

X. It is clear from the letter that the General Counsel based his interpretation on the word "acknowledged" contained in the text of Personnel Directive A/9. Acknowledgment of a resignation, however, is far from being equivalent to its "acceptance". "Acknowledgment" is the mere notice of receipt. Thus, the Tribunal does not find that it would have come to a different conclusion, had the text in question been in force at the time Judgement No. 874 was issued.

XI. In addition to determining whether the new fact was a decisive fact as stipulated in article 11, the Tribunal must also consider whether the fact relied upon was a state of affairs that existed at the time the Judgement was rendered. In this connection, the Tribunal notes that the alleged "new fact" was in reality an "old fact". The letter was written in 1977 and the versions of staff rule 109.6 and Personnel Directive A/9 referred to in the letter are both dated 1968. Both have gone through various revisions and, in the version of Personnel Directive A/9 applicable at the time the Judgment was given (the current version which became effective in 1989), the reference to the acknowledgement of resignations has been deleted. Thus, the Tribunal finds that the "new fact" alleged by the Applicant has no bearing on its interpretation as expressed in Judgement No. 874 and that the judgement remains valid.

XII. In the light of the foregoing, the Tribunal rejects the application in its entirety.

(Signatures)

Julio BARBOZA
Vice-President, presiding

Victor YENYI OLUNGU
Member

Marsha A. ECHOLS
Member

Geneva, 28 July 2000

Maritza STRUYVENBERG
Executive Secretary